IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2511 of 2001

to

SPECIAL CIVIL APPLICATIONNo 2537 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ICHCHHAPORE INDUSTRIAL CO-OPERATIVE SOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2511 of 2001

MR DHIRENDRA MEHTA for Petitioner No. 1

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondent No. 1-2

RULE NOT RECD BACK for Respondent No. 3

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Mr.C.L.SONI for Respondent No.3 & 4 in SCA No.2516/2001

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/09/2001

COMMON ORAL JUDGEMENT

Leave to delete Respondent No.3 in SCA Nos.2511/01, 2514/01, 2515/01, 2518/01, 2521/01, 2522/01, 2529/01, 2530/01, 2537/01 ;

Respondent Nos.3 & 4 in SCA Nos.2519/01, 2525/01 and SCA 2535/01.

Respondent Nos.3/1 and 3/2 in SCA Nos.2523/01, 2531/01 and 2534/01.

Respondent Nos.5 in SCA No.2516/01 and 2520/01.

The petitioners to carry out the amendments immediately.

RULE. Mr.S.P.Sen, learned AGP for respondents waive service of notice of rule on behalf of respondents. Mr.C.L.Soni, learned advocate appearing on behalf of the respondent Nos.3 & 4 in SCA No.2516 / 2001 waives service of rule on behalf of the respondents.

Heard Mr.D.K.Mehta, learned advocate appearing on behalf of the petitioner - Societies and Mr.S.P.Sen, learned AGP appearing on behalf of the respondents.

In the present petition, the petitioners have challenged the order passed by the Deputy Collector, Choryashi Prant, Surat in a group of matters - RTS / Revision / Remand No. 26/91 dated 30th June, 1992 and the second order passed by the Collector, Surat in Appeal No.18/92 in group of matters dated 30th July, 1993. Thereafter, the petitioners have challenged these orders before the Special Secretary [Appeals], Revenue Department, State of Gujarat by way of various Revision Application Nos.90 / 93 to 116 / 1993.

Learned advocate Mr.D.K.Mehta appearing on behalf of the petitioners - societies has submitted that the petitioners - Societies purchased different parcels of land situated in village Ichchhapore under registered sale deeds from the respondent No.3 and accordingly the mutation entry in Village Form No.6 was entered in the year 1980 itself. After period of 10 years, the Assistant Collector, Choryashi Prant, Surat issued show cause notice under Rule 108 [6] of the Gujarat Land Revenue Rules to take the mutation entry in suo motu revision for its cancellation for the breach of Section 63 of the Tenancy Act. The petitioners societies have submitted a reply and thereafter on 30th May, 1990. The

Asstt.Collector has set aside the mutation entry while exercising the powers under Rule 108 [6] of the Gujarat Land Revenue Rules. Thereafter the petitioners have approached the Collector, Surat, who has while remanding the matters directed to decide all the matter afresh. Thereafter on 30th June, 1992 the Deputy Collector, Choryasi Prant, Surat in remanded proceedings ordered to set aside the mutation entry, against which appeal was preferred before the Collector, Surat, who in turn, has also rejected the appeal preferred by the petitioners by his order dated 30th July, 1993. Thereafter, revision applications were filed before the Special Secretary, Revenue Department which were also rejected by his order dated 1st March, 2000.

Mr.D.K.Mehta, learned advocate appearing on behalf of the petitioners - societies has mainly raised two contentions before this Court. He submitted that while exercising the powers under Rule 108 [6] of the Gujarat Land Revenue Rules, the authority is not empowered and entitled to consider the breach of Section 63 of the Tenancy Act. While raising his second contention, Mr.D.K.Mehta, learned advocate has submitted that powers are exercised under Rule 108 [6] of the Gujarat Land Revenue Rules read with Section 211 of the Bombay Land Revenue Code after period of 10 years.

This Court has heard Mr.D.K.Mehta, leanred advocate for the petitioners and Mr.S.P.Sen, learned AGP at lenght. In respect of first contention, looking to the earlier two orders passed by the Deputy Collector, Choryashi Prant, Surat and the Collector, Surat, at the first instance, no such contention has been raised by the petitioner. However, the said contention has been raised by the petitioner in written arguments filed before the revisional authority but the revisional authority has not considered this written argument submitted by the petitioner. So far as the second contention is concerned, there is clear finding given by the revisional authority to the effect that if Section 63 of the Tenancy Act is violated then order is void and nullity, therefore the question of limitation will not come in the way while exercising the powers by the concerned authority. However, the second contention is required to be examined in light of the first contention. Considering the facts and circumstances of this group of matters, this Court is of the opinion that it is first necessary to have finding by the revisional authority in respect of the first contention. As such, there is no finding given by the revisional authority in respect of the first contention, though a specific contention has been raised by the

petitioner in written arguments. Written arguments submitted before the revisional authority are shown to this Court, wherein on internal page-7, the first contention raised by Mr.Mehta before this Court, has been specifically raised by the petitioners and also relied upon a decision of this Court reported in 1991 [1] GLH pg.155. However, the revisional authority seems to have grossly ignored this contention and clearly not examined nor given any finding in response to this specific contention. Now, this first contention has been again emphatically raised Mr.D.K.Mehta, learned advocate for the petitioners before this Court. However, looking to the order passed by the revisional authority, apparently no finding is given by the revisional authority. Therefore, considering all the aspects of the matter, in my opinion, decision in respect of the first contention is necessary especially, in light of the second contention as to the delay, which can only be examined at this stage, if the finding on first contention is available before this Court. Therefore, this Court is of the considered opinion that when the revisional authority, since not decided the first question though the same has been specifically raised by the petitioners, while exercising the powers under Rule 108 [6] of the Gujarat Land Revenue Rules read with Section 211 of the Bombay land Revenue Code and the important question whether the authority is empowered and entitled to consider the breach of Section 63 of the Tenancy Act has remained unanswered, in my opinion, the revisional authority has committed basic error while deciding application, hence, the orders passed by the revisional authority in group of revisions require to be set aside. Considering all these aspects of the matters, this Court is of the opinion that all these revisions are requried to be remanded to the Revisional Authority for rehearing afresh. Therefore, while remanding all these matters back to the revisional authority, with direction to examine this aspect of the matter and to give finding after giving a reasonable opportunity of hearing to all the respective parties.

In view of above discussion, present petitions are partly allowed. The orders passed by the revisional authority in Revision Application Nos.90 / 93 to 116 / 93 dated 1st March, 2000 are hereby quashed and set aside. It is directed to the revisional authority - Special Secretary [Appeals], Revenue Department, State Of Gujarat to rehear afresh all the revision applications after giving an opportunity of hearing to all the respective parties. It is also clarified that it is open to all the parties to raise all the contentions and to

produce any relevant evidence, if they so desire. It is also directed to the revisional authority to examine all the questions that may be raised by the petitioners and revisional authority will give a clear finding in respect of all the contentions that may be raised by the petitioners. It is further directed to the revisional authority to decide this group of revision applications as expeditiously as possible. In light of above observations and directions, it is made clear that this order is passed by this Court without expressing and deciding anything on merits or without examining any contention raised by the petitioners and the revisional authority is required to be decide afresh these revision applications without being influenced by the order passed by this Court. Rule is made absolute in each of the petition to the extent indicated.

Date : 10-9-2001 [H.K.Rathod, J.]

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